IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 380 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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YUNUSKHAN USMANKHAN SINDHI - Applicant(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR NK MAJMUDAR for Applicant(s) : 1,MR AR MAJMUDAR for Applicant(s) : 1,
Mr.H.L.Jani, APP for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 17/03/2006

CAV JUDGMENT

1. Heard Mr. N.K.Majmudar with Mr. A.R.Majmudar, learned Counsel for the petitioner and Mr. H.L.Jani, learned A.P.P. for the respondent-State.

1.1 Rule. Learned A.P.P. Mr. H.L.Jani waives service of rulefor the respondent-State.

1.2 With the consent of the learned Advocates of the respective parties, the matter is finally heard today.

2. By filing the present petition under Articles 226 and 227 of the Constitution, the petitioner has mainly questioned the action of the respondent no.3-Regional Transport Authority in not issuing/renewing fitness certificate and in not making necessary entry of transfer in the name of the new petitioner in respect of the Motor Vehicle /Truck bearing no.GJ-6-U-2089 owned by the petitioner and insisting for compounding of the offence punishable under the Motor Vehicles Act.

3. Mr. Majmudar, learned Counsel for the petitioner has vehemently argued that the Regional Transport Authority is illegaly insisting for compounding of the offence punishable under the Motor Vehciles Act and on that ground is witholding the issuance of fitness certificate of the vehicle owned by the petitioner.

4. Mr. Majmudar has pressed into service various decisions including the decision of this Court (Coram: D.N.Patel,J.) in Special Criminal Application no.1187 of 2004 dated 16th February, 2005 to point out that the

Regional Transport Authority cannot pressurise the petitioner to compound the offence under the Motor Vehicles Act before issuing fitness certificate of the vehicle in question. The relevant observations made by this Court in the above quoted ecision at Paras 3 and 4 of the judgment is reproduced herebelow for ready reference:

> "3. Looking to the facts and circumstances of the case, the concerned Regional Transport Officer is directed to proceed with and decide the applications preferred by the petitioner in accordance with law without compelling the petitioner for compounding the offences punishable under the provisions of the Motor Vehicles Act. It is, however, clarified that this order does not take away any right of the concerned authorities of the respondents to initiate any action under Sections 56 and 66 of the said Act if it is otherwise permissible under the law subject to the rights of the affected persons to challenge it.
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> 4. Looking to the facts and circumstances of the case and in view of the statement of the learned A.P.P. that the respondents shall not compel the

petitioner to compound the offences in respect of the vehicle in question, learned advocate for the petitioner is not pressing this petitioner at this stage and hence he seeks permission to withdraw this petition unconditionally at this stage. Permission as prayed for is granted. Accordingly, this petition stands disposed of as withdrawn....”

5. As can be seen from the above in the said decision, the matter came to be withdrawn with a view to exercise oissuance of fitness certificate without any compulsion on the part of the authority for compoundng the offence punishable under the provisions of the Motor Vehicles Act.

6. Learned A.P.P. Mr. H.L.Jani has fairly conceded that decision cited above is squarely applicable to the facts of the present case. However, according to the learned A.P.P. while taking me through Rule 73 of the Central Motor Vehcles Act, 1989 contended that for issuance of the fitness certificate the condition precedent is that there should be no dues of tax against the vehicle in question. Rule 73 of the said Rules spells out that the authorised testing station can refuse the application for grant or removal of certificate of fitness unless it is accompanied by tax clearance certificate. Learned Counsel

for the petitioner has made a statement that the amount of tax upto June 2006 shall be paid by the petitioner forthwith and that the requisite xerox copy of having paid the taxes shall be produced before the authorities.

7. In light of the well settled principles govering criminal jurisprudence charge or allegation which has penal consequences cannot be thrust on anybody, be it by direct or indirect ways. It is therefore open for the respondent authority to take appropriate decision in the case of the petitioner without compounding the offence under the Motor Vehicles Act.

8. In view of this position, the present petition is required to be allowed and is hereby allowed. The respondent authority is directed to issue fitness certificate and also make necessary entry of transfer in the name of the new petitioner in respect of the vehicle in question upon production of the xerox copy of the tax receipts showing payment of tax upto June, 2006 at the earleist. Rule is made absolute accordingly. Direct service today is permitted.

(M.D.Shah,J.)

mds-lee.